

Proposed Rules

Federal Register

Vol 48, No. 8

Wednesday, January 12, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 445]

Dry Creek Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Sonoma County, California, to be known as "Dry Creek Valley." This proposal is the result of a petition submitted by the Dry Creek Valley Association, Inc., a local grape/wine industry member group. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will permit wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify the wines they purchase.

DATE: Written comments must be received by February 11, 1983.

ADDRESSES: Send written comments or requests for a public hearing to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Attn: Notice No. 445).

Copies of the petition, the proposed regulations, maps with the boundaries of the proposed viticultural area marked, and any written comments will be available for public inspection during normal business hours at the: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Whitley, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200

Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. The revised regulations permit the establishment of definite viticultural areas and also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October, 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which amended Title 27, CFR, by adding a new Part 9 entitled "American Viticultural Areas." This part lists all approved American viticultural areas which may be used as appellations of origin on wine labels and in wine advertisements.

Section 4.25a(a)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in north central Sonoma County, California, as a viticultural area. The proposed viticultural area is to be known as "Dry Creek Valley." The

petition was submitted by the Dry Creek Valley Association, Inc., a local organization representing the interests of most grape/wine industry members in the area, and was signed by nine (9) members.

The proposed viticultural area is located northwest of the town of Healdsburg. A valley arm of the Russian River Valley and uplands immediately surrounding and to the west are encompassed. The proposed boundaries correspond, as much as possible, to the watershed of the area. The total area encompassed is approximately 80,000 acres or 125 square miles.

The inverted "U"-shaped valley arm extends southeasterly from just east of the Warm Springs Creek/Dry Creek confluence to the Dry Creek/Russian River confluence south of Healdsburg. From the northern beginning point, it gradually widens and eventually opens into a delta-like plain just east of Healdsburg. It is approximately 16 miles long and two (2) miles wide at the widest point. Dry Creek traverses the entire length of the valley arm. Approximately 20,500 acres or 32 square miles of the proposed viticultural area consists of the valley area.

The uplands surrounding the valley area are generally composed of rolling hills that range from 300 to 1,000 feet in elevation. These uplands surround the valley area on three sides. The upland area extending to the west of the valley area is composed primarily of fairly rugged small mountains that range from 1,000 to over 2,000 feet in elevation.

There are 21 bonded wineries in the proposed viticultural area. Also, six (6) wineries that are currently in the planning stage will probably locate in the proposed viticultural area in the near future. Currently, there are approximately 5,000 acres devoted to grape-growing. This acreage is situated primarily in the valley area. However, some vineyards have recently been developed in the upland areas. In addition, many more small upland areas capable of grape production may be developed into vineyards in the future.

The boundaries of the proposed viticultural area may be found on six (6) U.S.G.S. quadrangle (Topographic) maps, 7.5 minute series, scale 1:24,000, entitled—Geyserville, Jintown, Healdsburg, Guerneville, Cazadero, and Warm Springs Dam (formerly Skaggs Springs). The specific boundaries

proposed are detailed in the regulation portion of this document at § 19.64(c).

Viticultural/Geographical Features

The petitioner contends the proposed viticultural area is distinguishable from the surrounding area on the basis of climate, soil, geology and other physiographical features. The petitioner submitted evidence on the following to support this claim.

(a) *Climate.* The proposed viticultural area possesses two distinct seats of climatic conditions. The valley area has an annual rainfall of 25-50 inches, temperature of 58-60 degrees F., and a frostfree season of 240-270 days. The upland area has an annual rainfall of 30-70 inches, temperature of 54-58 degrees F., and a frostfree season of 230-270 days. The main Russian River Valley area to the south has an annual rainfall of 25-40 inches temperature of 54-60 degrees F., and frostfree season of 240-260 days. The proposed viticultural area is generally wetter, warmer, and has a longer growing season than the main Russian River Valley area.

The petitioner submitted a temperature comparison study, prepared by the Cooperative Extension, University of California, Sonoma County. It indicates the valley area is warmer than the main Russian River Valley area and cooler than the area to the north as a result of the moderating effect of fog on temperature. The study indicates the breakpoint in Sonoma County for intrusion of fog of sufficient intensity to significantly affect temperatures is generally the area in the vicinity of Healdsburg. This area includes the southern portion of the proposed viticultural area.

In addition, under the climatic region concept developed by Amerine and Winkler, the proposed viticultural area is generally classified as Region 3 and the main Russian River Valley area is generally classified as Region 2. That is, the sum of the mean daily temperature above 50 degrees F., expressed in temperature-time values of degree days, for each day in the period April-October of any given year is generally 3,001-3,500 for the proposed viticultural area and 2,501-3,000 for the main Russian River Valley area.

To summarize, the petitioner contends the proposed viticultural area possesses a unique set of growing conditions which distinguish it from the surrounding area. In addition, the petitioner claims these conditions have a marked influence on the amount and distribution of heat and moisture received by grapes during the growing season. This, in turn, directly affects the development and balance of sugar, acid,

and other constituents of grapes grown in the proposed viticultural area.

(b) *Geological Features.* The geomorphological characteristics of the proposed viticultural area generally correspond to distinguishable geological features which define a valley and an upland area.

The valley area is delineated on three sides by contact between geologically younger alluvial material with older indurated rock. These geological boundaries are generally continuous. However, there are gaps at the northern end of the valley where Dry Creek enters and along the eastern edge of the valley near the town of Geyserville. The valley area merges with the main Russian River Valley area near Healdsburg. Consequently, the southern boundary of the valley is less distinct and not as distinguishable as the other boundaries of the valley.

The alluvial material in the valley is composed of interbedded clay, sand and silt under the central floor; poorly stratified clay, silt and gravel near the edges which has formed alluvial fans; and poorly sorted clay, sand and gravel adjacent to and slightly above modern stream courses. The same type of alluvial material, distributed primarily in the same manner, is found in the adjacent Alexander Valley area. However, the two valleys are generally separated by an intervening area of uplands.

The upland areas are generally overlaid with indurated bedrock. This bedrock is part of the "Franciscan Formation" and is composed of graywacke, sandstone, chert, greenstone, pillow lava, shale, and serpentine. However, the upland area separating the valley area from the Alexander Valley area is composed of "Dry Creek Conglomerate." This consists of "Franciscan Formation" bedrock which has been sheared and ground by faulting action.

(c) *Soils.* The soils found in the valley area are distinct from the soils found on the surrounding uplands. This is due to the different parent material, i.e., alluvial in the valley and indurated rock in the uplands, from which the soils were formed. The soils found throughout the valley area are primarily of the Yolo-Cortina-Pleasanton association. The soils in the upland areas are of the Hugo-Josephine-Laughlin association west and north of the valley, Spreckels-Felta association southeast of the valley, and Los Gatos-Henneke-Maymen association northeast of the valley. The contrast in soils allows an easy distinction between the valley and upland areas. In addition, the upland

soils generally distinguish the valley area from adjacent viticultural areas.

(d) *Watershed.* The proposed viticultural area is served by Dry Creek, a major Russian River tributary. The proposed boundaries correspond, as much as possible, with the boundaries of the Dry Creek drainage basin. As a result, all of the valley area drained by Dry Creek and a large upland area drained by tributaries of Dry Creek are encompassed. The petitioner contends the proposed viticultural area encompasses an area which is geographically associated and distinguishable from the surrounding area on the basis of watershed criteria.

Evidence Relating to Name and Boundaries

The petitioner claims the viticultural area proposed in the petition is locally and/or nationally known by the name "Dry Creek Valley" and the boundaries are as specified in the petition. The petitioner submitted historical or current evidence consisting of the following to support these claims.

(a) Excerpts from various 19th century and contemporary, local and national publications which refer to the "Dry Creek Valley" as a grape-growing and wine-producing area.

(b) Excerpts from articles by 19th century and contemporary authors which generally describe the valley area included in the proposed viticultural area.

(c) Statements concerning the use of watershed criteria as a basis for including the large upland area in the proposed viticultural area.

(d) A collection of labels used by local wineries on various wines which refer to "Dry Creek Valley" as being the source of the grapes from which the wines were made.

(e) Statements concerning consumer recognition of the name "Dry Creek Valley" as applying to the proposed viticultural area.

Discussion

ATF feels the evidence submitted by the petitioner indicates establishment of "Dry Creek Valley" as a viticultural area may be warranted. Accordingly, the establishment of this grape-growing region as a viticultural area is proposed in this document.

However, we are not entirely convinced the boundary proposed is the most appropriate for the viticultural area. The petitioner states watershed criteria was used as a basis for the boundary since the area encompassed is geographically associated, well defined, and commonly understood. Furthermore,

vineyards recently developed in upland areas and areas suitable for future development as vineyards are encompassed by the boundary. Notwithstanding this, we feel the boundary may be inappropriate since a relatively high proportion of the upland area encompassed is either viticulturally unsuitable or currently used for purposes other than viticulture. On the other hand, we recognize the viticulturally suitable areas encompassed are widely dispersed and may preclude the use of alternative boundaries which vary significantly from that proposed. Nevertheless, other boundaries may be more appropriate. Accordingly, consideration will be given to other possible boundaries.

Public Participation

All interested persons are invited to participate in this proposed rulemaking by submitting written comments. Comments should be specific, pertain to the issue proposed in this rulemaking, and provide the factual basis supporting the data, views, or recommendations presented. Comments received before the closing date will be carefully considered prior to a final decision by ATF on this proposal. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

We are particularly interested in receiving comments which provide historical or current evidence as to whether the viticultural area boundaries are as specified in the petition. In addition, comments are invited on alternative boundaries. These comments should include data on the geographical and viticultural characteristics which distinguish the area encompassed from the surrounding area.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. All materials and comments received will be available for public inspection during normal business hours.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Director, within the comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in the light of all

circumstances, whether a public hearing should be held.

ATF reserves the option to determine, on the basis of written comments, our own research, and in the light of any other circumstances, whether this viticultural area should be established. In addition, ATF may modify, through the rulemaking process, the viticultural area which may be established as a result of this proposed rulemaking when in the judgment of the Director such action is determined to be warranted.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Dry Creek Valley viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this document is Jim Whitley, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel of other offices of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.64. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.64 Dry Creek Valley.

Par. 2. Subpart C is amended by adding § 9.64 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.64 Dry Creek Valley.

(a) *Name.* The name of the viticultural area described in this section is "Dry Creek Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Dry Creek Valley viticultural area are six U.S.G.S. topographic maps. They are—

- (1) "Geyserville Quadrangle, California—Sonoma County," 7.5 minute series, 1955 (Photorevised 1975);
- (2) "Jimtown Quadrangle, California—Sonoma County," 7.5 minute series, 1955 (Photorevised 1975);
- (3) "Healdsburg Quadrangle, California—Sonoma County," 7.5 minute series, 1955 (Photorevised 1980);
- (4) "Guerneville Quadrangle, California—Sonoma County," 7.5 minute series, 1955;
- (5) "Cazadero Quadrangle, California—Sonoma County," 7.5 minute series, 1978; and
- (6) "Warm Springs Dam Quadrangle, (formerly 'Skaggs Springs Quadrangle'), California—Sonoma County," 7.5 minute series, 1978.

(c) *Boundaries.* The Dry Creek Valley viticultural area is located in north central Sonoma County, California. From the beginning point lying at the intersection of latitude line 38 degrees 45 minutes and the east line of Section 4, Township 10 North (T. 10 N.), Range 10 West (R. 10 W.) on the "Geyserville Quadrangle" map, the boundary runs—

(1) Southeasterly in a straight line to the northeast corner of Section 9, T. 10 N., R. 10 W;

(2) Then southerly along the east line of Section 9 to the southeast corner thereof;

(3) Then S. 74 degrees, E. 2,800 feet in a straight line to the northeasterly tip of a small lake;

(4) Then N. 57 degrees, E. 2,300 feet in a straight line to the southeast corner of Section 10, T. 10 N., R. 10 W;

(5) Then S. 16 degrees, E. 1,800 feet in a straight line to the point on a peak identified as having an elevation of 664 feet;

(6) Then S. 55 degrees, E. 7,900 feet in a straight line to the most northerly point on the northeasterly line of "Olive Hill" cemetery lying on the easterly side of Canyon Road;

(7) Then southeasterly along the northeasterly line of "Olive Hill" cemetery to the most easterly point thereon;

(8) Then S. 2 degrees, E. 3,100 feet in a straight line to the point in the westerly fork of Wood Creek lying at the westerly terminus of a dirt road;

(9) Then southerly 3,100 feet along the west fork of Wood Creek to the point lying 400 feet north of the point on a peak identified as having an elevation of 781 feet;

(10) Then southerly 400 feet in a straight line to the point on a peak identified as having an elevation of 781 feet;

(11) Then S. 50½ degrees, E. 15,500 feet in a straight line to the point lying at the intersection of Lytton Creek and the township line common to T. 9 N. and T. 10 N. in R. 9 W.;

(12) Then southerly along Lytton creek to Lytton Springs Road in T. 9 N., R. 9 W. on the "Jimtown Quadrangle" map;

(13) Then easterly along Lytton Springs Road to the point of intersection with U.S. Highway 101 (a.k.a. Redwood Highway);

(14) Then southerly along U.S. Highway 101 to the point of intersection with an unnamed light duty road (known locally as Chiquita Road) on the "Geyserville Quadrangle" map;

(15) Then easterly along the unnamed light duty road to the point of intersection with an unnamed heavy duty road (known locally as Healdsburg Avenue) on the "Jimtown Quadrangle map";

(16) Then southerly along the unnamed heavy duty road through the town of Healdsburg to the centerline of the Russian River on the "Healdsburg Quadrangle" map;

(17) Then southerly along the centerline of the Russian River to the confluence of Dry Creek;

(18) Then west-southwesterly in a straight line to an unnamed light duty road (known locally as Foreman Lane);

(19) Then westerly along the unnamed light duty road, crossing West Dry Creek Road and passing Felta School, to the point of intersection with Felta Creek on the "Guerneville Quadrangle" map;

(20) Then southwestwardly 18,000 feet along Felta Creek to the point lying at the intersection of three springs in T. 8 N., R. 10 W., approximately 300 feet east from the word "Springs";

(21) Then S. 58 degrees, W. 15,000 feet in a straight line to the southwest corner of Section 9, T. 8 N., R. 10 W;

(22) Then northerly along the west line of Sections 9 and 4, T. 8 N., R. 10 W., continuing along the west line of Section 33, T. 9 N., R. 10 W. to the northwest corner thereof;

(23) Then westerly along the south line of Sections 29 and 30, T. 9 N., R. 10 W. to the southwest corner of Section 30 on the "Cazadero Quadrangle" map;

(24) Then northerly along the south line of Section 13, T. 9 N., R. 11 W. to the northwest corner of Section 19;

(25) Then westerly along the south line of Section 13, T. 9 N., R. 11 W. to the southwest corner thereof;

(26) Then southwestwardly 14,200 feet in a straight line to the northeast corner of Section 20, T. 9 N., R. 11 W;

(27) Then westerly along the north line of Section 20 to the northwest corner thereof;

(28) Then northerly along the east line of Sections 18, 7, and 6, T. 9 N., R. 11 W., continuing along the east line of Sections 31, 30, 19, 18, 7, and 6, T. 10 N., R. 11 W. to the point of intersection with latitude line 38 degrees 45 minutes on the "Warm Springs Dam Quadrangle" map; and

(29) Then easterly along latitude line 38 degrees 45 minutes to the point of beginning.

Signed: December 6, 1982.

W. T. Drake,
Acting Director.

Approved: December 20, 1982.

David Q. Bates,
Deputy Assistant Secretary (Operations).
[FR Doc. 83-676 Filed 1-11-83; 6:45 am]
BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 446]

Willow Creek Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the establishment of a viticultural area in portions of Humboldt and Trinity Counties, California, to be known as "Willow Creek." This petition was submitted by the Willow Creek Viticultural Area Committee under the signature of Mr. Dean Williams of Willow Creek Winery.

ATF believes the establishment of American viticultural areas and their subsequent use as appellations of origin allows wineries to better designate the specific grape-growing areas where their wines come from and allows consumers to better identify the wines they purchase.

DATE: Comments must be received on or before February 11, 1983.

ADDRESS: Comments should be addressed to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 446).

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20266 (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising the wine regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas, and allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) adding a new Part 9 to 27 CFR for the listing of approved American viticultural areas.

27 CFR 9.11 defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. 27 CFR 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition.

(b) Historical or current evidence that the boundaries of the proposed area are as delineated in the petition.

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.),